

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 FREMONT STREET, 21st FLOOR
SAN FRANCISCO, CALIFORNIA 94105

RH-399

Fair Claims Settlement Practices Regulations
Response to Comments on Proposed Amendments to Section 2695.2(s)

Commentator: Keesha-Lu M. Mitra, State Farm Insurance Companies
Date of Comment: May 20, 2003
Type of Comment: Written

Summary of Comment: The proposed language blurs the distinction between “proof of claim” and “notice of claim.” In addition, the term “evidence” is unclear because it can relate to insurance coverage, legal liability and causation, in addition to information related to the amount of the loss.

Response to Comment: The Commissioner has considered this comment and rejects it. The revision does not blur the distinction between “proof of claim” and “notice of claim” which two concepts are separately defined in the regulations. The term “evidence” is not unclear as the definition of “proof of claim” specifies that not just any evidence will be considered part of proof of claim but only evidence that “reasonably supports the claim.”

Commentator: Samuel Sorich, National Association of Independent Insurers
Date of Comment: May 20, 2003
Type of Comment: Written

Summary of Comment: The amendment allowing “evidence” as an alternative to “documentation” and the deletion of the standards of “magnitude or the amount of the claimed loss” create ambiguity and invite arbitrary enforcement.

Response to Comment: The Commissioner has considered this comment and rejects it. The word “evidence” is not ambiguous as the definition of “proof of claim” specifies that not just any evidence will be considered part of proof of claim but only evidence that “reasonably supports the claim.”

Summary of Comment: Insurance Code Section 790.03(h)(4) triggers an insurer’s obligation to accept or deny a claim based on information submitted by an insured. Under the proposed amendment, instead of confining proof of a claim to information submitted by the insured, the concept is expanded to any evidence regardless of whether the evidence was submitted by an

insured or claimant. This expansion of the meaning of “proof of claim” is not authorized by Insurance Code Section 790.03(h)(4).

Response to Comment: The Commissioner has considered this comment and rejects it. Insurance Code Section 790.03(h)(4) does not preclude an insurer from considering information obtained from sources other than the claimant. Additionally, under Insurance Code Section 790.03(h)(2), it is an unfair practice for an insurer to “fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies.” If an insurer has access to information that supports a claim, it should consider the information regardless of whether it comes from the claimant.

Summary of Comment: The proposed amendment deletes the requirement that proof of claim must include documentation that supports “the magnitude or the amount of the claimed loss.” Under the proposed definition, proof of claim could be established by any information that reasonably supports the claim even though that information does not include any information relating to the amount of the claim. But the submission of that information would force an insurer, under Section 2695.7(b), to document “amounts” accepted or denied in the insurer’s claim file. An insurer cannot be expected to document amounts when the proof of claim does not include any information about the amount of the claim. The existing reference in Section 2695.2(s) to “the magnitude or the amount of the claimed loss” should be retained.

Response to Comment: The Commissioner has considered this comment and rejects it. The “magnitude or the amount of the claimed loss” are necessarily part of what constitutes a claim. An insurer would not have to accept a claim unless the evidence or documentation submitted or received by the insurer or discovered in the course of the insurer’s investigation provided proof of the claim. If the proof of claim provided did not include any information about the amount of the claim, the insurer would have no amount to document in the claim file.

Commentator: Joseph B. Miller, Mercury Insurance Group

Comment Received: May 20, 2003

Type of Comment: Written

Summary of Comment: The deleting of the phrase “in the claimant’s possession”, the Department deprives insurers of the ability to require claimants to bear any responsibility for the accuracy or inaccuracy of the information available to an insurer during the course of its investigation. The current language acts as a disincentive to unscrupulous claimants who may be inclined to fraudulently misrepresent or conceal relevant facts to increase their own recovery at the expense of the insurer. The proposed amendment shifts the burden of investigation on insurers with no corresponding burden of disclosure on claimants.

Response to Comments: The Commissioner has considered this comment and rejects it. The deletion of the words “in the claimant’s possession” does not shift the burden of investigation or burden of disclosure. Rather, the claimant should submit to the insurer evidence or documentation in the claimant’s possession that supports the claim. Additionally, the insurer should also consider evidence or documentation that the insurer receives (from the claimant or elsewhere) or discovers in the course of investigation if it reasonably supports the claim. The

proposed amendment does not alter the claimant's obligation to make accurate disclosures to the insurer.

Summary of Comment: Under the amended definition, “proof of claim” is indistinguishable from “notice of claim.”

Response to Comment: The Commissioner has considered this comment and rejects it. The revision does not blur the distinction between “proof of claim” and “notice of claim” which two concepts are separately defined in the regulations.